

will have the responsibility for preparing the appropriate environmental review document. Whenever the Chief delegates this responsibility in accordance with §1940.302(i) of this subpart, the Chief is responsible for reviewing the environmental document to ensure that it is adequate, that any deficiencies are corrected, and that it is signed by the preparer. When the document is satisfactory to the Chief, the Chief will sign it as the concurring official. When no delegation occurs, the Chief will sign as the preparer. If the environmental review document is either a Class I or Class II assessment, it must be provided to the SEC for review prior to being submitted to the approval official for final determinations. The SEC will review the assessment and provide recommendations to the approval official.

(2) Whenever the preparer and the SEC do not concur on either the adequacy of the assessment or the recommendations reached, the State Director, whether or not the approving official, will make the final decision on the matter or matters in disagreement. The State Director will also make the final decision whenever a State Office approving official disagrees with the joint recommendations of the preparer and the SEC. In either case, should the State Director desire, the matter will be forwarded to the National Office for resolution. The Program Support Staff will coordinate its resolution with the appropriate Assistant Administrator. Failure of these parties to resolve the matter will require a final decision by the Administrator. The State Director should also request the assistance of the National Office on actions that are too difficult to analyze at the State Office level.

(c) *District or County Office level.* The approval official for the action under review will be responsible for preparing the appropriate environmental review document and completing the environmental findings and impact determinations for Class I and Class II assessments, except in the circumstances outlined in paragraph (d) of this section. Whenever the approval official delegates the preparation of the environmental review in accordance with §1940.302(i) of this subpart, the ap-

proval official must, after exercising the same responsibilities assigned to the Program Chief as indicated in paragraph (b)(1) of this section, sign the environmental review document as the concurring official. Both District Directors and County Supervisors will contact, as needed, the SEC for technical assistance in preparing specific environmental review documents.

(d) *Multi-level review.* When the approval official is at the County Office or District Office level but the action must be forwarded to the State Office for concurrence, the responsible Program Chief will perform the responsibilities of the concurring official with respect to the environmental review document and the SEC will review it, if a Class I or Class II assessment, in a similar manner as indicated in paragraph (b) of this section. Responsibilities similar to those of the Program Chief will exist for the District Director when the County Supervisor forwards an action to the District Office for concurrence.

(e) *Reservation of authority.* The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or great local significance. State Directors have a similar right with respect to District and County Offices.

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions exempts properly defined actions or proposals from the review requirements of NEPA. It does not exempt proposals from the requirements of other environmental laws, regulations or Executive orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Extraordinary circumstances may cause an application to lose its categorical exclusion and require a Class I environmental assessment, as further specified in paragraph (e) of this section. Section 1508.4 of

§ 1940.317

CEQ's regulations state that "any procedures under this section will provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (see §1940.310(b)(5) of this subpart) but is not exempt from the requirements of Executive Order 11990, "Protection of Wetlands." In the processing of this application, FmHA or its successor agency under Public Law 103-354 must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filling of 2 acres of wetland, such a potential wetland impact, under the requirements of §1940.310(a) of this subpart, represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA or its successor agency under Public Law 103-354's compliance with the Executive order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See §1940.314 of this subpart.)

(b) The approving official for an action will be responsible for ensuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfill this responsibility, Form FmHA or its successor agency under Public Law 103-354 1940-22 will be completed for those actions that would normally be categorically excluded and as further defined in paragraph (c) of this section. When Form FmHA or its successor agency under Public Law 103-354 1940-22 must be prepared and the approving official delegates its preparation in accordance with §1940.302(i) of this subpart, the approving official must sign the form as the concurring official. If

7 CFR Ch. XVIII (1-1-09 Edition)

that approving official must, prior to approval, forward the action to a District or State Office for review, a second concurrence must be executed by the Program Chief or District Director, as determined by the level of review being conducted. The checklist is filed with the application and serves as FmHA or its successor agency under Public Law 103-354's documentation of compliance with the environmental laws, regulations and Executive Orders listed on the checklist. Whenever the preparer is within the State Office or is in the National Office, the FmHA or its successor agency under Public Law 103-354 office where the processing of the application was initiated is responsible for providing sufficient site and project information in order to complete the checklist.

(c) Form FmHA or its successor agency under Public Law 103-354 1940-22 need not be completed for all categorical exclusions as defined in §1940.310 of this subpart but only for those listed below. This list identifies the exclusions by their subject heading and paragraph number within §1940.310 of this subpart. Additionally, for the housing assistance exclusion identified in §1940.310(b)(8), for farm programs exclusions listed in §1940.310(d)(2) and (3), and for community and business programs exclusions processed under §1940.310(e)(2) of this subpart, a notation must be made in the docket materials or running record for the action by the processing official that the specific criteria of the applicable exclusion have been met for the action under review.

(1) Housing assistance—(b), (1), (2), (3), (5), (7), and (9);

(2) Community and Business Programs—(c) (1) and (2);

(3) Farm Programs—(d) (1) through (11);

(4) General exclusions—(e)(2), if action covered by exhibit M of the subpart, and (6).

(d) In applying the definition of a categorical exclusion to a project activity, the preparer must consider the following two elements in addition to the specific project elements for which approval is requested.

(1) If the application represents one of several phases of a larger proposal,

the application will undergo the environmental review required for the elements or the size of the total proposal. For example, if approval of a four-lot subdivision is requested and the application evidences or the reviewer knows that additional phases are planned and will culminate in a 16-lot subdivision, the categorical exclusion does not apply and an environmental assessment for a Class I action must be initiated and must address the impact of developing 16 lots. Should the applicant subsequently apply for approval of any of these additional phases, no further environmental assessment will be required as long as the original assessment still accurately reflects the environmental conditions found at the project site and the surrounding areas.

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA or its successor agency under Public Law 103-354. If an environmental assessment is required, it will address the environmental impacts of the entire project.

(e) Under any one of the following circumstances, an action that is normally categorically excluded loses its classification as an exclusion and must be reviewed in the manner described in paragraph (g) of this section. The following listing corresponds to the list of land uses and environmental resources contained in part 2 of Form FmHA or its successor agency under Public Law 103-354 1940-22.

(1) Wetlands—the proposed action:

(i) Would be located adjacent to a wetland or a wetland is within the project site, and

(ii) The action would affect the values and functions of the wetland by such means as converting, filling, draining, or directly discharging into it;

(2) Floodplains—the proposed action:

(i) Includes or involves an existing structure(s) located within a 100-year floodplain (500-year floodplain if critical action), or

(ii) Would be located within a 100-year floodplain (500-year floodplain if

critical action) and would affect the values and functions of the floodplain by such means as converting, dredging, or filling or clearing the natural vegetation;

(3) Wilderness (designated or proposed)—the proposed action:

(i) Would be located in a wilderness area, or

(ii) Would affect a wilderness area such as by being visible from the wilderness area;

(4) Wild or Scenic River (proposed or designated or identified in the Department of the Interior's nationwide Inventory)—the proposed action:

(i) Would be located within one-quarter mile of the banks of the river,

(ii) Involves withdrawing water from the river or discharging water to the river via a point source, or

(iii) Would be visible from the river;

(5) Historical and Archeological Sites (listed on the National Register of Historic Places or which may be eligible for listing)—the proposed action:

(i) Contains a historical or archeological site within the construction site, or

(ii) Would affect a historical or archeological site;

(6) Critical Habitat or Endangered/Threatened Species (listed or proposed)—the proposed action:

(i) Contain a critical habitat within the project site,

(ii) Is adjacent to a critical habitat, or

(iii) Would affect a critical habitat or endangered/threatened species;

(7) Coastal Barrier Included in Coastal Barrier Resources System—the proposed action would be located within the Coastal Barrier Resources System;

(8) Natural Landmark (listed on National Registry of Natural Landmarks)—the proposed action either:

(i) Contains a natural landmark within the project site, or

(ii) Would affect a natural landmark;

(9) Important Farmlands—the proposed action would convert important farmland to a nonagricultural use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

§ 1940.318

(10) Prime Forest Lands—the proposed action would convert prime forest land to another use(s), except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(11) Prime Rangelands—the proposed action would convert prime rangeland to another use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(12) Approved Coastal Zone Management Area—the proposed action would be located within such area and no agreement exists with the responsible State agency obviating the need for a consistency determination for the type of action under consideration;

(13) Sole Source Aquifer Recharge Area—the proposed action would be located within such area and no agreement exists with the Environmental Protection Agency (EPA) obviating the need for EPA's review of the type of action under consideration; and

(14) State Water Quality Standard—the proposed action would impair a water quality standard, including designated and/or existing beneficial uses, or would not meet applicable antidegradation requirements for point or nonpoint sources.

(f) From the above paragraph (e), it should be noted that the location within the project site of any of the land uses and environmental resources identified in paragraphs (e) (1), (2), (9), (10), (11), (12), and (13) of this section is not sufficient for an action to lose its categorical exclusion. Rather, the land use or resource must be affected in the case of paragraphs (e) (1), (2), (9), (10), and (11) of this section. For paragraphs (e) (12), (13) and (14) of this section, further review and consultation can be avoided by written agreement with the responsible agency detailing the types of actions not requiring interagency review.

(g) Whenever a categorical exclusion loses its status as an exclusion for any of the reasons stated in paragraph (e) of this section, the environmental impacts of the action must be reviewed through the preparation of a Class I assessment, Form FmHA or its successor agency under Public Law 103-354 1940-21. Not all of the procedural requirements for a Class I assessment apply in

7 CFR Ch. XVIII (1-1-09 Edition)

this limited case, however. The following exemptions exist:

(1) No public notice provisions of this subpart apply.

(2) The applicant does not complete Form FmHA or its successor agency under Public Law 103-354 1940-20.

(3) The action does not require a Class II assessment should more than one important land resources be affected.

§ 1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the preparer (as defined in §§ 1940.302(i) and 1940.316 of this subpart) is to examine Form FmHA or its successor agency under Public Law 103-354 1940-20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it will be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment will be initiated in the format and manner described in exhibit H of this subpart. In completing the assessment, appropriate experts from State and Federal agencies, universities, local and private groups will be contacted as necessary for their views. In so doing, the preparer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. Appropriate experts must be contacted whenever required by a specific provision of this subpart or whenever the preparer does not have sufficient data or expertise available within FmHA or its successor agency under Public Law 103-354 to adequately assess the degree of a potential impact or the need for avoidance or mitigation. Comments from an expert must be obtained in writing whenever required by a specific provision of this subpart or the potential environmental impact is either controversial, complex, major, or apparently major. When correspondence is exchanged, it will be appended to the assessment. Oral discussions should be documented in the manner indicated in exhibit H of this subpart. On the other hand, there is no